IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

RSA.No. 901 of 2003(G)

AS.344/2000 of ADDL.DISTRICT COURT, THRISSUR
OS.42/1998 of I ADDL.SUB COURT, THRISSUR

.....

APPELLANT/PLAINTIFF.

* AMMUKUTTY AMMA, D/O.KUNDIL MEENAKSHI AMMA, AND W/O.PANDIKARAN RAMANATH IYER, CHAVAKKAD TALUK, PAVARATTY AMSOM, MARUTHAYOOR DESOM, THRISSUR DISTRICT. (DIED)

ADDL. 2. M.BALACHANDRAN, S/O.AMMUKUTTY AMMA, AGED 49 YEARS, MADATHIL HOUSE, MARUTHAYOOR P.O. THRISSUR – 680 507 REP. BY HIS GUARDIAN PADMAVATHY AMMA.

ADDL. 3. PADMAVATHY AMMA, W/O.GOPALAN, AGED 52 YEARS, "KRISHNA VIHAR", PANTHALATH LAND, KANATTUKARA P.O. THRISSUR.

ADDL. 4. THANKAMANI AMMA, W/O.NARENDRAN, AGED 56 YEARS, PERUMBAYIL HOUSE, MARUTHAYOOR P.O., THRISSUR – 680 507.

(THE LEGAL REPRESENTATIVES OF DECEASED FIRST APPELLANT ARE IMPLEADED AS SUPPLEMENTAL APPELLATS 2 TO 4 AS PER ORDER DATED 5.12.2006 IN I.A.NO.1665/2005)

BY ADV. SRI.S.R.DAYANANDA PRABHU
SRI.K.S.RAJESH

RESPONDENTS: RESPONDENTS/DEFENDANTS.

1. P.V.SIVASANAKARAN, S/O.PANDIKARAN VISWANATHAN, 400, 19 H/MAIN ROAD, FIRST N BLOCK, RAJAJI NAGAR, BANGALORE -10.

2. P.V.VENKITA SUBRAMANONIAN, ADVOCATE, KASHMIR ROAD, PO.PAVARATTY, THRISSUR DISTRICT.

3. P.V.VARADARAJAN, S/O.PANDIKKARAN
VISWANATHA IYER, PO.PAVARATTY, CHAVAKKAD TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN
SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

R.S.A.No.901 of 2003

Dated this the 5th December, 2007.

J U D G M E N T

This appeal is filed against the concurrent findings of fact by both the trial court as well as the lower appellate court. Appellant filed the suit claiming maintenance, on the ground that she was having a limited estate. Appellant contended that she was the widow of one Ramanath Iyer, who was a sharer of the property, and hence, after his death, she is entitled to get maintenance charged over the property, which was allotted to her deceased husband in partition. The trial court held that the only Ramanath Iyer had got only a life interest and after his death, the property devolved to other sharers and appellant is not entitled to get maintenance from the defendants. During the pendency of the appeal, appellant died and legal representatives are impleaded as additional appellants.

2. In Mulla – Hindu Law, 17th Edition, Page No.791, it is stated as follows:-

> "***Death pending suit for maintenance*** : - The right of a widow to claim maintenance when it has not crystallised into a definite sum is not inchoate right. In such a case if she dies pending her suit for maintenance it does not survive to her legal representatives. Nowever, if the right has been declared, for instance, by a preliminary decree the position will be different."

3. In Muthalammal v. Veeraraghavalu Nayudu and Others (AIR 1953 Madras 202), the Division Bench of Madras High Court held that 'the right of a Hindu widow to claim maintenance out of her husband's estate when it has not crystallised into a definite sum is an inchoate right which cannot be transferred or assigned. Her claim to maintenance is personal and, therefore, if she dies pending her suit for maintenance against the estate of her husband in the hand of a coparcener the claim does not survive to her legal representatives.' So, the suit and appeal had abatted as the right to sue does not survive to her children. Hence, the appeal is only to be dismissed.

In the result, the appeal is dismissed.

The Registry is directed to re-transmit the records forthwith to the trial court.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

R.S.A.No.901 of 2003

J U D G M E N T

Dated: 5th December, 2007.